

 **Southwestern Bell** Mobile Systems  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

October 12, 1994

**Via Federal Express**

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General  
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Acting Secretary  
Federal Communications Commission  
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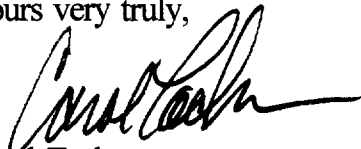
Re: FCC Docket 94-54,  
Reply Comments of Southwestern Bell Corporation

Dear Mr. Caton:

Enclosed please find the original and ten copies of Southwestern Bell Corporation's Reply Comments for filing in FCC Docket 94-54. One copy is to be stamped, received, and the additional copies are to ensure each Commissioner receives these Comments, in accordance with the instructions in this docket.

Thank you for your assistance.

Yours very truly,

  
Carol Tacker

CT/sd  
enclosures  
cc: Certificate of Service List

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**OCT 13 1994**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON D.C.**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	§	
Equal Access and Interconnection	§	CC Docket
Obligations Pertaining to	§	No. 94-54
Commercial Mobile Radio Services	§	RM 8012

To: The Commission

**REPLY COMMENTS OF  
SOUTHWESTERN BELL CORPORATION**

Respectfully submitted,

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DATED: October 13, 1994

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## SUMMARY

SBC in its initial comments in this proceeding argued that equal access is a regulatory relic from another communications era with no applicability in a competitive wireless marketplace. Thus, no CMRS provider should be saddled with this obligation. No countervailing argument offered by other commenters should persuade the Commission to take a step backward. Cellular customers care about larger local calling scopes that make commercial sense in a mobile environment, not the choice of interexchange carrier (IXC). The Commission should not be persuaded to continue to protect the IXC's niche market in cellular long distance at the expense of the public interest. Nor should CMRS resellers be permitted to presume they are CMRS providers in contravention of the language and history of the Budget Control Act, as some resellers have argued. The Commission should not mandate interconnection among CMRS providers, or between CMRS providers and resellers. The exigencies at the market have led to the voluntary interconnection where there is a benefit to be realized. Further, the Commission has already mandated cellular resale.

Finally, MCI has not shown a valid reason why it should be entitled to access a CMRS providers' customer information to any greater extent than it enjoys today. Already it has information necessary to bill and collect and to identify new customers "picked" to MCI. There is no justification for any further incursion into these proprietary databases.

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In the Matter of	§	
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To: The Honorable Commissioner:

REPLY COMMENTS OF  
SOUTHWESTERN BELL CORPORATION

Comes now Southwestern Bell Corporation ("SBC") on behalf of itself and its subsidiaries and submits these comments in reply to comments received by the Commission concerning whether to impose equal access obligations on all Commercial Mobile Radio Services ("CMRS") providers, whether to revise the Local Exchange Carrier ("LEC") interconnection rules and whether to impose new obligations requiring CMRS providers to interconnect with each other.

I. INTRODUCTION

Not surprisingly, the comments concerning equal access that were filed in this proceeding followed three predictable paths:

1. The interexchange carriers ("IXCs") who risk substantial loss of revenues if they cannot continue to discriminate against wireless customers (in particular, individuals and small businesses) and who benefit financially from all local calling scopes being narrowly defined argue that equal access should be applied to all CMRS providers. (See e.g., Comments of Allnet, AT&T, LDDS, and MCI).

2. The BOCs who are already obligated to provide equal access say equal access is wrong in the wireless arena, but regulatory parity demands its imposition on all CMRS providers (See Comments of Ameritech, Bell Atlantic, NYNEX, Bell South, Pacific Bell and Pacific Bell Mobile Services), and most said local calling scopes should be broadly drawn. SBC, alone among the BOCs, argued for no imposition of equal access obligations upon any CMRS provider.
3. The CMRS providers who are not currently obligated to provide equal access argue against its imposition. (See e.g. Comments of Alltel Mobile Communications, American Mobile Telecommunications Association, Century, Comcast, SNET Mobility, and Vanguard).

Nothing in these comments alters the inevitable conclusion that equal access is unnecessary in a competitive marketplace, such as wireless. As Commissioner Chong was recently quoted in the September 19, 1994, edition of the *Radio Communications Report*,

"Equal access was aimed to ensure that a provider who had a bottleneck monopoly would be fair (in) terms of providing (long distance) access, but that concern is alleviated once you have competitors."

SBC agrees with Commissioner Chong's insight and argues that her view should be the ultimate result of this proceeding.

Comments on the other proposals in the proceeding were likewise, not surprising. While the various commercial mobile service providers agree that mandatory interconnection between CMRS systems is neither wanted nor desirable at this time, and should not be mandated and/or tariffed, the National Cellular Resellers Association again makes demands for mandatory interconnection and regulatory oversight, including unbundling of network elements and tariffing. Resellers do not provide commercial mobile service and should not be allowed to force re-engineering, cost allocation and regulatory burdens on the CMRS industry through mandatory interconnection. In addition, MCI, without any legitimate

justification, continues its assault upon the CMRS providers for proprietary customer information. Again, access should be denied.

## II. EQUAL ACCESS

### A. There Is No "Bottleneck" in Cellular Provision.

SBC showed in its brief that the perception of a local exchange "bottleneck" inspired the original imposition of equal access requirements on LECs, and that no such "bottleneck" exists in cellular due to the existence of alternative providers. Commenters provided ample support for this argument. Even AT&T and MCI did not attempt to argue the existence of a "wireless bottleneck" to support their claims that equal access should be provided.<sup>1</sup> LDDS, an IXC, did attempt to argue the existence of a "wireless bottleneck," but that argument was fatally flawed. LDDS argues that "from the perspective of an IXC the wireless 'loop' represents an essential bottleneck facility." LDDS appears to define this "wireless loop" as the cellular provider's "access to its customer base." Since, without equal access, the customer cannot choose its IXC, then a bottleneck exists, according to LDDS. In effect, LDDS is arguing to protect its niche market, cellular long distance, not competition in general. The antitrust laws are not intended to protect competitors, rather the laws protect competition. Under LDDS' theory, there could be one hundred wireless providers in a market from which a customer could choose, but LDDS would still cry "Bottleneck!" unless it can access each wireless provider's customers.

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<sup>1</sup>Sprint, the third largest IXC, did not file comments in this proceeding.

Professor Hausman, who filed an affidavit on behalf of SBC in its initial Comments, analogizes this type of argument to fast food restaurants choosing to provide either Coca-Cola or Pepsi, but not both.<sup>2</sup> He points out that a customer does not have a claim that they lack access to "their" chosen soft drink company, just as a customer does not have their own personal IXC. The relevant question is whether cellular customers are able to buy cellular long distance at a competitive price. Professor Hausman put his finger on the ludicrous aspect of using "access to customers" as the definition of a bottleneck when he stated, "Under the DOJ definition of a bottleneck, McDonald's hamburger stands control a bottleneck since they offer only Coca-Cola, but not Pepsi Cola or Royal Crown Cola, so McDonald's can "prevent or deter a customer's access" to a particular soft drink when buying a "Big Mac" hamburger." *Id.* As Professor Hausman concludes, not every IXC needs to offer cellular long distance to ensure a competitive price. As shown in SBC's original comments, equal access has done nothing to prevent the anti-competitive pricing of IXCs in markets providing a choice of carriers.<sup>3</sup>

**B. Equal Access Does Not Benefit the Public.**

In its initial Comments, SBC argued that equal access does not benefit the public for the following reasons: (1) interexchange carriers charge individual customers anti-

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<sup>2</sup>See Affidavit of Jerry Hausman, United States of America v. Western Electric and AT&T, CA No. 82-0192 (HHG) (USDC June 1994), Reply Brief of the Bell Companies for a Modification of Section II of the Decree to Permit Them to Provide Cellular and Other Wireless Services Across LATA Boundaries (hereafter "Generic Wireless Proceeding") at p. 5.

<sup>3</sup>See Comments of SBC at pp. 24-29.



competitive prices; (2) the interexchange carriers have failed to provide innovations for cellular customers in equal access markets; and (3) customers do not demand equal access.<sup>4</sup>

Each of these arguments were supported by the comments of other filers. For instance, Michael B. Azeez<sup>5</sup> arguing on behalf of several independent RSA carriers, stated that the IXC's showed little interest in competing for toll traffic generated by their customers, and what interest has been shown by the IXC's is only if the Independent RSA carriers would aggregate their long distance traffic and sign a multi-year commitment to deliver all of their traffic to the IXC under volume discounts (in effect becoming the "big customer" SBC argued it could become on behalf of its individual customers if free to do so).

AT&T argues that "customer choice" is the "superior means of serving the public interest and fostering competition in the telecommunications industry." Customers do have choice -- choice among cellular providers, and will have even more choice as new CMRS providers enter the marketplace. AT&T, of course, is arguing choice among IXC's. As SBC has shown, that choice has not fostered competition nor has it served the public interest.<sup>6</sup> In fact, AT&T continues to charge anti-competitive prices to individual cellular customers, and other IXC's have followed AT&T as the price leader in charging similar anti-competitive prices. Id. This price discrimination is not in the public interest.

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<sup>4</sup>See Comments of SBC at pp. 24-36.

<sup>5</sup>See Comments of Michael B. Azeez d/b/a Deadwood Cellular Telephone Company, Durango Cellular Telephone Company, Ohio State Cellular Phone Company, and Trillium Cellular Corporation, at p. 5.

<sup>6</sup>See Comments of SBC at pp. 24-29.

AT&T speaks globally of the consumer "benefits" of equal access. Has the consumer benefitted from the anti-competitive prices being charged by AT&T and other IXC's to cellular customers?<sup>7</sup> Certainly not. AT&T speaks of "innovative features and services" (at p. 6), but does not, and indeed cannot, delineate what these services are. That is because IXC innovations to cellular customers are virtually non-existent. MCI speaks of certain advantages cellular business customers can receive from their private network services.<sup>8</sup> This is the same MCI that filed an opposition in the Generic Wireless Waiver proceeding and stated that developing discount plans for "relatively large customer groups" entails fixed costs and that these kinds of increased costs are why savings to MCI in serving cellular customers are offset.<sup>9</sup> Perhaps it is the existence of these anti-competitive prices and lack of innovations that make the choice of a long distance provider a low priority to cellular customers.<sup>10</sup> Instead, the primary interest of cellular customers is the provision of a calling scope that meets the customers' needs in a mobile environment. Id.

C. Cellular Customers Demand Larger Calling Scopes.

SBC demonstrated in its Comments that almost ten times as many Southwestern Bell Mobile Systems' ("SBMS") cellular customers who were surveyed care more for the availability of large local calling scopes over choice of long distance carriers.<sup>11</sup> Given the

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<sup>7</sup>See Affidavit of Jerry Hausman, Comments of SBC, Tab 1 at pp. 12-16, also see Comments of SBC at pp. 29-31.

<sup>8</sup>See MCI Comments at p. 2.

<sup>9</sup>See Brief of MCI, Generic Wireless Proceeding, at p. 21.

<sup>10</sup>See Comments of SBC at pp. 31-33, and Tab 2.

<sup>11</sup>See Comments of SBC at p. 35, also see Tab 2.

flexibility, SBMS could provide even larger or additional toll-free calling scopes that comport with the mobile usage patterns of its cellular customers. Other commenters support the importance of this issue to cellular customers.

For instance, Pacific Telecom Cellular, Inc. noted that without equal access it is able to offer its customers a choice of service and pricing options such as state-wide toll-free calling.<sup>12</sup> SNET Mobility, Inc. notes that the imposition of equal access could reduce toll discounts and make more calls subject to toll.<sup>13</sup> Vanguard Cellular argued that the negative aspects of equal access include lost efficiencies from vertical integration or bundling of services, reduced network efficiency and loss of benefits from clustering and wide area calling plans.<sup>14</sup> The Rural Cellular Association<sup>15</sup> notes that in many cases, rural cellular carriers do not even charge their customers for the long distance portion of the call.

Appended to SBC's Comments at Tabs 6 and 7 are examples of large area toll-free calling, including statewide toll-free calling, that are in existence in Texas today. The IXC's would be hard put to explain how the customer achieves greater benefits from IXC choice than from the creation of these customer friendly calling scopes that equal access would render impossible to provide through the imposition of arbitrary parameters in which toll must be imposed.

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<sup>12</sup>See Comments of Pacific Telecom Cellular, Inc. at p. 4, also see Comments of Small Market Cellular Operators at pp. 1-2.

<sup>13</sup>See SNET Mobility, Inc. Comments at pp. 7-9.

<sup>14</sup>See Comments of Vanguard Cellular at pp. 10-15.

<sup>15</sup>See Comments of Rural Cellular Association at p. 8. See further Comments of Triad Cellular at pp. 7-8.

MCI argues that LATAs are the appropriate calling scope.<sup>16</sup> MCI even militates in favor of the Commission disallowing the current "clustered" calling scopes. MCI suggests cellular customers were forced to "forego" their choice of long distance carrier in order to have these larger calling scopes. Of course, according to SBMS' customers, that is a choice they would gleefully make,<sup>17</sup> a choice they prefer ten times over choice of long distance carrier. Id. In fact, forty-four percent (44%) of SBMS' customers who were surveyed ranked choice of long distance carrier of the least important of four factors for choosing a cellular carrier, ranking it behind large local calling scopes, competitive local rates and 24 hour customer service. Id. The customers, if not MCI, recognize that this "choice" comes with a heavy price.

MCI also argues that any change in LATA boundaries should be authorized only where larger territories have been approved by "court order" applying the "community of interest" standard.<sup>18</sup> What court does MCI suggest would exercise jurisdiction over this determination, since non-BOCs are not subject to the continuing jurisdiction of Judge Greene? Does MCI suggest that the FCC should abdicate all such issues to Judge Greene in further homage to the MFJ? Would a lawsuit have to be filed every time a LATA issue involving a non-BOC is raised? Will inconsistent LATA designations result, or does MCI suggest Judge Greene should be burdened with oversight of the entire wireless industry? This suggestion is

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<sup>16</sup>See Comments of MCI at pp. 4-5.

<sup>17</sup>See Comments of SBC at p. 33 and Tab 2.

<sup>18</sup>See Comments of MCI at pp. 4-5.

a precursor to the flood of waiver requests the FCC would receive if it were to impose equal access as broadly as MCI suggests.

MCI also makes an unsupported statement that, "In a mass CMRS market, even more than in the cellular market, the vast majority of calls will originate in the subscriber's home area (LATA) and probably terminate there as well." Given the wide number of multi-LATA calling scopes,<sup>19</sup> this presumption is incorrect. Since most, if not all, MTAs encompass multi-LATAs, the argument of a "mass CMRS market" customer calling within a LATA is even more curious.

MCI argues on page 6 that the cellular industry has a heavy burden to demonstrate the need for multi-LATA wireless calling areas. Why? Given the strong preference of cellular customers for larger calling scopes and given the obvious advantage to the consumer of a large toll-free calling area, it makes more sense to ask MCI and other IXC's to justify why the public should continue to subsidize these companies through the imposition of calling scopes that do not comport with a competitive mobile environment and, more importantly, the needs, desires and best interest of the public.

Finally, concerning MCI, one cannot ignore the fact MCI had different ideas concerning the necessity of customer "choice" when it was still partnering with Nextel. MCI was limiting the ability of Nextel's customers to choose another long distance provider.<sup>20</sup> Now that the MCI - Nextel partnership has disintegrated, choice again becomes of paramount importance to MCI. At page 3 of the Comments MCI filed in the proceeding, it now argues

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<sup>19</sup>See Affidavit of Jerry Hausman, SBC Comments, Table 1 at Tab 1; and Tabs 6 and 7.

<sup>20</sup>See Comments of SBC at p. 17.

that wide area or enhanced ESMR (such as Nextel) should be subject to "identical equal access obligations." In the Petition for Rulemaking which initiated much of this examination, MCI requested equal access be applied to cellular licensees, not ESMR providers.<sup>21</sup>

As Bell South pointed out in its reply brief in the Generic Wireless Proceeding,<sup>22</sup> if consumers so valued the choice equal access has given them, the BOCs should enjoy a substantial edge in markets in which they compete against providers who do not offer equal access. This edge would lead to the non-BOCs voluntarily converting to equal access in order to compete, and such mass conversion has not occurred. Bell South also demonstrated that in Florida, where it competes with McCaw, even though its rates are lower than McCaw's in five of the six cities where they compete, Bell South has lost market share to McCaw due to the decree-related advantages McCaw historically enjoyed.<sup>23</sup>

Accordingly, no persuasive argument has been presented to demonstrate the public interest, as opposed to the interests of the IXCs, would be served if equal access were imposed on all CMRS providers. To the contrary, the public interest would be served if the FCC were to decline to impose equal access on any CMRS provider. Instead, the Commission should use its expertise and energies in working to remove this regulatory relic

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<sup>21</sup>See Petition for Rulemaking, In the Matter of Rules and Policies Pertaining to the Equal Access Obligation of Cellular Licensees, RM 8012, June 6, 1992.

<sup>22</sup>Reply of Bell South in Generic Wireless Proceeding, at p. 16, fn. 20.

<sup>23</sup>*Id.*, at p. 19, fn. 21.

from the BOCs and to allow the market place, as opposed to regulatory fiat, to establish local calling scopes that make sense in a competitive wireless market.<sup>24</sup>

### III. INTERCONNECTION

An overwhelming majority of the Commenters support the Commission's proposal that LEC-CMRS interconnection should be by negotiated agreement instead of tariff.<sup>25</sup> Commercial mobile service providers filing Comments also urge the Commission not to mandate interconnection between CMRS providers or the filing of tariffs for such interconnection.<sup>26</sup> The industry also urges the Commission to preempt the state commissions from mandating CMRS-CMRS interconnection.<sup>27</sup> The basic premise of the CMRS providers and others filing in support of these positions is that the CMRS provider does not control "bottleneck facilities" and thus mandatory interconnection requirements among CMRS providers is not required or desirable.<sup>28</sup> Rather, CMRS providers should be allowed to make

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<sup>24</sup>See Comments of SBC at pp. 37-42.

<sup>25</sup>See e.g. Ameritech Comments at pp. 3-4; Bell Atlantic Comments at pp. 13-14; Bell South Comments at pp. 5-7; AT&T Comments at pp. 12-13; AirTouch Comments at p. 21; Cellular Telecommunications Industry Association (CTIA) Comments at pp. 17-24; Personal Communications Industry Association (PCIA) Comments at p. 12.

<sup>26</sup>See e.g. AirTouch Comments at pp. 22-23; American Mobile Telecommunications Association Comments at p. 14; CTIA Comments at pp. 25-29; McCaw Cellular Communications, Inc. (McCaw) Comments at pp. 9-13; Rural Cellular Association Comments at pp. 9-10; Nextel Comments at pp. 18-19.

<sup>27</sup>See e.g. BellSouth Comments at pp. 20-22; AirTouch Comments at pp. 26-27; DCR Communications, Inc. Comments at p. 10; McCaw Comments at pp. 18-20; New Par Comments at pp. 20-21.

<sup>28</sup>Ameritech Comments at pp. 3-4; BellSouth Comments at p. 12; AirTouch Comments at pp. 21-22; McCaw Comments at pp. 6-8; New Par Comments at pp. 22-23.

their own decisions on when and where to interconnect, based on the market -- not regulatory mandates.

A. Mandatory Interconnection between CMRS Providers and Resellers is Neither Required nor Necessary.

The National Cellular Resellers Association (Resellers Association) undertakes a curious strategy in its Comments. Previously, the Resellers Association acknowledged that resellers were susceptible to contentions that they were not entitled to interconnection with common carriers "because they are not definitionally providing 'a commercial mobile service'" and thus requested that the Commission make "absolutely clear that such resellers do occupy the **status** of commercial mobile service providers."<sup>29</sup> The Resellers Association also previously acknowledged that one feature they "may lack is a license to engage in commercial mobile service" but claim that they provided the same "functionally equivalent service for the public" as a licensed commercial mobile service provider.<sup>30</sup> The ability to claim that the service resellers provide is functionally equivalent to a licensee's service should not be surprising since they are merely reselling a licensee's service. The fact that they are reselling a licensee's service does not make them a licensee nor does it make them a provider of such service -- they are merely a reseller. In the present proceeding the Resellers Association change strategies -- they now boldly assume that they are commercial mobile service providers and thus assume that they entitled to any interconnection rights that the Commission may grant CMRS providers. Thus, instead of requesting the Commission to

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<sup>29</sup>Comments of National Cellular Resellers Association at p. 21, filed November 8, 1993, GN Docket 93-252. (National Resellers 93-252 Comments). (emphasis added)

<sup>30</sup>National Resellers Comments 93-254 at pp. 21-22.



declare that a reseller has the same "status" as a commercial mobile service provider or is providing the same "functionally equivalent service" as a licensee and thus should be treated as a licensee, the resellers merely presume they are commercial mobile service providers and common carriers.<sup>31</sup>

The resellers bold presumption ignores both the language and the history of the Budget Control Act. Nowhere in either the legislative history of the Act or in the Act itself are there any references to resellers or any indication that resellers fall within the category of "providers" of either commercial or private mobile services. To the contrary, the House Report on the Budget Act, in discussing Section 332 and the concept of regulatory parity, makes specific reference to the rate treatment of common carrier licensees.<sup>32</sup>

Mobile Service is defined in pertinent part as "a radio communication service carried on between mobile stations or receivers or land stations, and by mobile stations communicating among themselves."<sup>33</sup> Resellers do not provide a commercial mobile service, they merely resell a commercial mobile service provided by some other entity.<sup>34</sup> Thus, even if the Commission should rule contrary to the view of the industry and mandate

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<sup>31</sup>See National Cellular Resellers Association Comments at p. 8, fn. 11 (Reseller Association 94-54 Comments) .

<sup>32</sup>H.R. Rep. 103-111.

<sup>33</sup>47 U.S.C. 153(n).

<sup>34</sup>Because a reseller is not engaged in the provision of commercial mobile radio service, a local exchange carrier should be able to resell the service of a CMRS provider. Thus, SBC supports BellSouth's request that the Commission make clear that its resale policy permits a Bell local exchange company to resell the cellular service of its affiliated cellular carrier. See BellSouth Comments at pp. 25-27.

interconnection between commercial service providers, such a mandate would not give resellers the right to demand interconnection.

The Commission should also not mandate interconnection between CMRS providers and resellers of CMRS services. This Commission has already recognized that CMRS providers do not control "bottleneck facilities."<sup>35</sup> As Commissioner Barrett has noted "where there is no issue of interconnection to bottleneck facilities for transport and switching, then I believe there is a higher burden to justify such regulatory requirements."<sup>36</sup> It is simply inappropriate for non-licensed resellers to be granted the right to mandate interconnection with CMRS providers. AirTouch Communications notes that reseller interconnection could cause network planning and reliability problems, change the incentives which currently exist today in the CMRS industry to build state of the art facilities and employ diverse service strategies and network capabilities, and divert industry and regulatory resources from more productive activities.<sup>37</sup> Reseller interconnection does not improve the quality or capacity of the existing system -- it merely duplicates facilities of the CMRS provider and reduces efficiency.<sup>38</sup> As Airtouch notes, the reseller interconnection proposal is one fraught with economic, competitive and technical problems that far outweigh any alleged new features to reseller customers.<sup>39</sup>

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<sup>35</sup>See Notice of Proposed Rulemaking and Notice of Inquiry, para. 124, CC Docket 94-54, RM 8012, released July 1, 1994 (hereafter referred to as NPRM/NOI).

<sup>36</sup>NPRM/NOI, Separate Statement of Andrew C. Barrett.

<sup>37</sup>Comments of AirTouch Communications at pp. 23-27.

<sup>38</sup>AirTouch Comments at pp. 25-26.

<sup>39</sup>Airtouch Comments at p. 23.

What the CMRS providers need to build the industry is the ability to run the business as a competitive concern without the hinderance of having to build or redesign their systems to allow for mandated interconnection to any reseller and the accompanying regulatory burdens requested by the resellers, such as, tariff filings and the development of unbundled cost based rate elements. It is ironic that the Commission has precluded the filing of tariffs by cellular carriers and demanded that any existing tariffs be pulled down for competitive reasons, yet the resellers are requesting that tariffs be filed containing cost based rate elements. Similar calls for regulation of cellular carriers from the Resellers Association have been consistently rejected in the past as possibly (1) being counterproductive, (2) hindering price competition, (3) leading to price distortions, including higher prices, and (4) circumventing competition-driven investment.<sup>40</sup> The Resellers Association demand for interconnection rights for resellers and accompanying claims for regulation should be denied.

B. MCI's Continued Efforts for Access to Proprietary Databases should be Rejected.

MCI's continued efforts to gain access to proprietary databases should be rejected. As noted in the Comments of SBC and others, IXCs currently receive all the information they need to bill and collect for the service they provide.<sup>41</sup> MCI now claims, however, that it somehow needs the "electronic fingerprint"<sup>42</sup> and electronic serial number of

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<sup>40</sup>In the Matter of Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Notice of Proposed Rulemaking and Order, para. 52-53, CC Docket No. 91-33 (Released March 27, 1991).

<sup>41</sup>SBC Comments at pp. 72-74; Pacific Bell Comments at p.11; NYNEX Comments at p. 10; New Par Comments at pp. 19-20.

<sup>42</sup>CMRS providers will use the "electronic fingerprint", like they do the electronic serial number, to authenticate authorized users on the system. The electronic fingerprint is being developed in an attempt to curb the use of cloned phones.

the CMRS subscriber's CPE unit in order to limit the incidence of toll fraud. MCI's argument is a red herring and again merely a guise in its attempt to gain access to proprietary information about the CMRS customer. MCI's argument is a red herring because it is the CMRS provider who will be determining whether the unit is authorized -- it makes no sense to pass the same information to the long distance provider. If the unit appears to be authorized to the CMRS provider it will appear to be the same to MCI because MCI is relying on the same information. If the unit is identified as a cloned phone, access will be denied and the call will not reach the IXC. While MCI is correct that cellular fraud is a major problem facing the entire industry, MCI fails to demonstrate why it is in a better position to determine unauthorized access than the CMRS provider who will be attempting to authenticate authorized use in reliance on the same information. The Commission should not be hoodwinked by MCI into allowing access to information which will not assist MCI in preventing fraudulent use -- if the criminal element has copied the proprietary information so that the phone appears to be authenticated to the CMRS provider, the phone will appear the same to the MCI. MCI has simply failed to demonstrate why access to such information is necessary for billing and collection or how it can use such information to prevent fraud.

#### IV. CONCLUSION

For the reasons stated herein and in the Initial Comments filed by SBC in this proceeding, equal access should not be imposed on CMRS providers, and mandatory interconnection to resellers and to other CMRS providers, as well as, IXC access to the proprietary information of CMRS providers, is unnecessary and unjustified.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments will be mailed via first class mail, postage prepaid, to the following party on the 13th day of October, 1994:

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